

A person who permanently affixes building materials to real estate is deemed to be a construction contractor. In Illinois, construction contractors are deemed to be the end users of the tangible personal property they permanently affix to real estate and incur Use Tax liability based on the cost price of the building materials so purchased. (This is a GIL.)

December 14, 2000

Dear Xxxxx:

This letter is in response to your letter dated September 15, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We respectfully request your assistance in providing an opinion regarding sales tax for a construction contractor who incorporates building materials into real estate and invoices customers for such items on a time and material basis.

The contractor will pay sales tax to his vendors for all materials purchased for installation.

The contractor's invoice to the customer will detail and separately state the contractor's labor marked-up cost, the material marked-up cost, and sales tax for the material only.

The issue for which we require your opinion relates to the contractor's markup on the material cost. The contractor will already have paid the sales tax on the cost of the material. However, the material will be marked up by 10% and then sales tax charged on the marked-up cost. (See Exhibit A)

Is the contractor responsible for paying the excess sales tax collected on the 10% markup of the material cost.

This markup and the excess sales tax is intended to be additional profit for the contractor. It is merely the form of the customer invoice separately stating the material that creates an apparent sales tax issue. If the invoice did not separately state this material and sales tax, the invoice would show the same total amount due from the customer. (See Exhibit B)

Your time and attention to this matter will be appreciated.

Please be advised persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty and may never assign the cost of the use or sales tax to their customers. Please see the enclosed copies of Sections 130.1940 and 130.2075.

The Use Tax is a privilege tax imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail. See 86 Ill. Adm. Code 150.101(a), enclosed.

The process engaged in by a construction contractor results in destroying the identity of the material as tangible personal property and converting it into real estate. Using the items for purposes of construction contracts takes the materials as such off the retail market thereby making the contractor an end-user and liable for Use Tax, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d. 180 (1961). See the enclosed copy of 86 Ill. Adm. Code 130.1940.

Please note that as a construction contractor and end-user, you have no authority to charge a tax to your customers. It is permissible to phrase this charge as a reimbursement of your tax liability or just incorporate this charge into the total amount due; however, it cannot be charged as a tax. Any knowing over-collection on this basis constitutes a Class 4 felony.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

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